

GENERAL STATUTES

OF THE

STATE OF MINNESOTA

36

IN FORCE

JANUARY 1. 1889.

COMPLETE IN TWO VOLUMES.

VOLUME 1, the General Statutes of 1878, prepared by GEORGE B. YOUNG, edited and published under the authority of chapter 67 of the Laws of 1878, and chapter 67 of the Laws of 1879.

VOLUME 2, Supplement.—Changes effected in the General Statutes of 1878 by the General Laws of 1879, 1881, 1881 Extra, 1883, 1885, and 1887, arranged by H. J. HORN, Esq., with Annotations by STUART RAPALJE, Esq., and others, and a General Index by the Editorial Staff of the NATIONAL REPORTER SYSTEM.

VOL. 2.

SUPPLEMENT, 1879-1888,

WITH

ANNOTATIONS AND GENERAL INDEX TO BOTH VOLUMES.

ST. PAUL:
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1888.

30. For salary of the clerk of the secretary of state, twelve hundred dollars. (1879, c. 32, *as amended* 1883, c. 148, § 2.)

*30. For salary of assistant land clerk in the state land-office, twelve hundred dollars. (1883, c. 146, § 3.)

31. For services of superintendent and labor on experimental fruit farm, one thousand dollars. (1879, c. 32.)

32. For salary of the public examiner, thirty-five hundred dollars. (*Id.*)

33. [For salary of deputy clerk of supreme court, one thousand dollars. See, *ante*, *§ 1, subd. 23.]

CHAPTER 8.

COUNTIES AND COUNTY OFFICERS.*

TITLE 1.

TERRITORIAL DIVISIONS.

*§ 2a. Aitkin county—Territory attached.

That lot four of section thirteen, and the fractional sections twenty-four, twenty-five, and twenty-six, all in township one hundred and thirty-six north, of range twenty-five west of the fifth principal meridian, be, and the same are, each and all thereof, detached from the county of Cass, in this state, and attached to the county of Aitkin, in this state. (1887, c. 117, § 1.)

*§ 2b. Transcripts of records.

That the register of deeds of the county of Aitkin shall, as soon as practicable, make, or cause to be made, transcripts of all records affecting the titles to the real property being and lying within the territory described in the first section of this act, at the expense of the county of Aitkin, and he shall record the same in the records of his office in and for said county, and when the same are so recorded, they shall have the same force and effect as if originally recorded in such records. (*Id.* § 2.)

*§ 8. Beltrami county.

That so much territory as is comprised within the following-described limits, coincident with lines of the United States land surveys when run and marked, be, and the same is hereby, established as the county of Beltrami: Beginning at the point where the line between ranges thirty-eight and thirty-nine intersects the line between townships one hundred and forty-two and one hundred and forty-three; thence northwardly on said range line to the boundary line between the United States and British possessions; thence eastwardly and along said boundary line to its intersection with the line between ranges twenty-nine and thirty; thence southwardly along said range line to the center of the main channel of the Mississippi river; thence up the center of the main channel of said river to its intersection with the line between

*See Gen. Laws 1879, c. 62, providing for the submission to the people of Lac qui Parle, Yellow Medicine, and Lincoln counties of the question of the establishment of Canby county.

As to regulation of employment bureaus, see *post*, c. 10.

For provisions relating to trust companies as sureties on official bonds, see *post*, c. 34.

For provisions relating to bounties for killing wolves and blackbirds, see *post*, c. 124.

For provisions in relation to distribution of seed grain, see *post*, c. 124.

As to mutilated, lost, and destroyed bonds, orders, and warrants, see *post*, c. 124.

In reference to drainage, see *post*, c. 124.

townships one hundred and forty-two and one hundred and forty-three; thence westwardly along said township line to the place of beginning. (1866, c. 46, § 1, *as amended*, 1879, c. 10, § 1.)

***§ 10a. Big Stone county—Declared organized.**

That the county of Big Stone, as now established by law in this state, be, and the same is hereby, declared to be an organized county, with all the rights, privileges, and immunities of other organized counties within this state. (1881, c. 106.)

See *State v. Parker*, 25 Minn. 215.

§ 11. Blue Earth county.

See *Foster v. Com'rs Blue Earth Co.*, 7 Minn. 140, (Gil. 92;) *Village of Mankato v. Meagher*, 17 Minn. 265, (Gil. 243.)

§ 15. (Sec. 12.) Cass county.*

After the passage of the act of March 6, 1876, attaching Cass county to Crow Wing county, the county commissioners of Cass county had no power to remove the treasurer of such county, nor to fill the vacancy thereby created. *State v. McFadden*, 23 Minn. 40.

***§ 15a. Cass county—Territory detached from Morrison.**

That all that part of Morrison county lying north of the north line of townships number one hundred (100) and thirty-one (31) be, and the same is hereby, detached from the county of Morrison, and the same is hereby annexed and attached to the county of Cass.† (1887, c. 260, § 1.)

***§ 19a. Cook county—Organization legalized.**

That the action of the governor in appointing county commissioners for the county of Cook, and the action of said commissioners in appointing the other officers of said county, and the action of the voters of said county in electing county officers at the late general election be, and the same are hereby, legalized and declared valid, and the said county declared to have become thereby, and to be, a duly organized county, and that all the past acts and proceedings of officers of said county shall be of the same validity as though such appointments of commissioners and officers had been expressly authorized by an act declaring said county of Cook to be an organized county. (1883, c. 93, § 1.)

***§ 21a. Crow Wing county—Territory detached from Cass.**

That all that part of the county of Cass lying south of the line between townships one hundred and thirty-five and one hundred and thirty-six, and east of the line between ranges thirty-one and thirty-two, except towns one hundred and thirty-five in ranges thirty and thirty-one, be, and the same is hereby, detached from said county of Cass, and attached to, and made a part of, the county of Crow Wing.‡ (1883, c. 80, § 1.)

***§ 21b. Same—Territory detached from Morrison.**

That all that part of the county of Morrison, lying north of the line between townships one hundred and thirty-one and one hundred and thirty-two, and an easterly extension of said line, be, and the same is hereby, detached from the

*§ 3, c. 208, Sp. Laws 1876, (disorganizing Cass county,) is amended by striking out the word "ten" in the sixth line and inserting in lieu thereof the word "twelve." The section amended relates to compensation for levy and collection of taxes, etc. (1879, c. 19, § 1.)

†To be submitted for adoption to the electors of Morrison county. If adopted, the territory is to remain a part of Morrison county until Cass county shall become organized, and is then to become a part of such organized county. (*Id.* §§ 2-5.)

‡The provisions of the act were to be submitted to a popular vote at the next general election. (*Id.* §§ 5, 6.)

said county of Morrison, and attached to, and made a part of, the county of Crow Wing. (1883, c. 80, § 2.)

***§ 21c. Same—Territory attached to Morrison.**

That all that part of the county of Crow Wing lying between the southern boundary line of said county, and the second section line north of said boundary line, the same being the two most southerly ties [tiers] of sections of said Crow Wing county, be, and the same is, hereby detached from the county of Crow Wing, and attached to, and made a part of, the county of Morrison. (*Id.* § 3.)

***§ 21d. Taxation.**

That all the detached territory hereinbefore described shall remain subject to taxation to pay the principal and interest of the existing indebtedness of the county from which the same is hereby detached to the same extent as though this act had not been passed, and shall not be liable to taxation for the existing bonded indebtedness of the county to which it is hereby attached; and the county auditor of each of said counties from which territory is hereby detached, shall annually certify in due season to the county commissioners of the county to which such territory is hereby attached, the amount of tax to be levied upon such transferred territory on account of such bonded indebtedness, which tax shall thereupon be levied and collected as other taxes, and paid over to the county treasurer of the county from which the same shall have been so certified. The territory hereby detached from the county of Cass, shall not, for the period of six years, be subject to any other, further, or higher taxation for any purpose than of [if] the same had remained a part of said Cass county. (*Id.* § 4.)

***§ 21e. Territory detached from Cass.**

That all that part of Cass county lying east of the range line between ranges twenty-eight and twenty-nine, and south of the township line between townships one hundred and thirty-five and one hundred and thirty-six, the same being the territory described as township one hundred and thirty-five, in ranges twenty-seven and twenty-eight, and township one hundred and thirty-three in range twenty-eight be and the same hereby is detached from the county of Cass and annexed and attached to the county of Crow Wing.* (1885, c. 203, § 1.)

***§ 21f. Territory detached from Cass County.**

That all that part of Cass county lying south of the north line of township one hundred thirty-eight, and east of the north and south center line of range twenty-nine, according to government survey, be and the same is hereby detached from the county of Cass, and annexed and attached to the county of Crow Wing, in said state.† (1887, c. 118, § 1.)

***§ 21g. Taxes.**

All taxes heretofore levied and now uncollected on property within such territory, if the same shall be attached as above provided, shall belong to and shall be collected by the county of Crow Wing, as other taxes are collected in said county. (*Id.* § 4.)

§ 30. (Sec. 25.) Hennepin county.

As to the Crow River boundary, see *Powers v. Ames*, 9 Minn. 178, (Gil. 164.); *Guilder v. Town of Otsego*, 20 Minn. 74, 77, (Gil. 59, 63.)

*To be submitted to the electors of Crow Wing county. (*Id.* §§ 2, 3.)

†To be submitted to a popular vote of Crow Wing county. (*Id.* §§ 2, 3.)

***§ 31a. Hubbard county.**

That the following-described territory, all of which lies within the present territorial limits of the county of Cass, in this state, is hereby established as an organized county of this state, to be hereafter known and designated as the county of Hubbard; that is to say: Townships numbered one hundred and thirty-nine and one hundred and forty, range number thirty-two; townships numbered one hundred and thirty-nine, one hundred and forty, one hundred and forty-one, and one hundred and forty-two, of range number thirty-three; and townships numbered one hundred and thirty-nine, one hundred and forty, one hundred and forty-one, one hundred and forty-two, and one hundred and forty-three, of ranges number thirty-four and thirty-five west of the fifth principal meridian, according to the United States survey of public lands.* (1883, c. 78, § 1.)

***§ 33a. Itasca county—Territory detached from Cass.**

That all that certain territory situate in the county of Cass in this state and described as follows, to-wit: Commencing at the north-west corner of township number fifty-two, and range twenty-seven, in the state of Minnesota; thence running on the guide line to the center of the stream or channel of the Mississippi river; thence following down along the center line of the channel of said river to a point where the north line of township fifty-two crosses said river; thence west, on the north line of township fifty-two, to the place of beginning,—be and the same is hereby detached from the county of Cass in this state, and attached to the county of Itasca in this state. (1887 c. 116, § 1.)

***§ 33b. Transcripts of records—Taxes.**

That transcripts shall be made at the expense of said Itasca county by the register of deeds keeping the records of and for Itasca county, as soon as may be practicable, of all records now affecting the titles to the lands lying and being within said described territory, which said transcripts shall be recorded at length by said register of deeds in the records of said Itasca county; and, when so recorded, they shall have the same force and effect as if originally recorded therein: *provided*, that no tax shall be levied thereupon other than that provided by law to be levied in such organized counties.† (*Id.* § 2.)

§ 35. (Sec. 30.) Kanabec county.‡**§ 36. (Sec. 31.) Kandiyohi county.**

A record of a deed, in 1869, in Meeker county, of lands in Kandiyohi county is good. Sp. Laws 1869, c. 75, did not have the effect to organize the last-named county, generally. *Smith v. Anderson*, 38 Minn. 25, 27, 21 N. W. Rep. 841.

§ 37. (Sec. 49.) Kittson county.

The county of Kittson is established and bounded as follows: Beginning at a point where the line between townships one hundred and fifty-eight and one hundred and fifty-nine intersects the center of the channel of the Red River of the North; thence east along said line produced to the point where said produced line intersects the line between ranges thirty-eight and thirty-nine; thence northwardly along said range line to the boundary line between the United States and British possessions; thence westerly along the said

* With provisions for appointment of county commissioners, who are to locate the county-seat, and appoint county officers. (*Id.* §§ 2-4.)

† Tax-list to be delivered to the county auditor having jurisdiction over Itasca county. (*Id.* § 3.)

‡ Gen. Laws 1881, Ex. Sess. c. 87, declares Kanabec county to be organized, and provides for submitting to the electors the question of removing the county-seat, for term of court therein, and for transcribing the records. See *post*, c. 64.

boundary line to the middle of the main channel of the Red River of the North; thence up said river, along the middle thereof, to the place of beginning. (*As amended* 1879, c. 10, § 2.)

***§ 37a. Kittson and Marshall counties declared organized.**

That the counties of Kittson and Marshall, in this state, be and the same are hereby declared to be organized counties, with all the rights, privileges, and immunities of other organized counties within this state. (*Id.* § 4.)

***§ 39a. Lake county.**

That the county organization heretofore existing *de facto* in the county of Lake, since the appointment by the governor of commissioners for said county, on the tenth day of May A. D. eighteen hundred and sixty-six, be and the same is hereby legalized, and the said county is hereby declared to be, and to have been ever since the said May tenth, [A. D.] eighteen hundred and sixty-six, a duly-organized county.* (1883, c. 86.)

***§ 44a. Marshall county.†**

The county of Marshall is hereby established and bounded as follows: Commencing at the intersection of the middle line of the main channel of the Red River of the North with the line between townships one hundred and fifty-four and one hundred and fifty-five; thence east along said line to the southeast corner of township one hundred and fifty-five; thence north along the line between ranges thirty-eight and thirty-nine to its intersection with the line between townships one hundred and fifty-eight and one hundred and fifty-nine produced; thence west along said line to the center of the main channel of the Red River of the North; thence up the main channel of said river, following the western boundary of the state, to the place of beginning. (1879, c. 10, § 3.)

***§ 44b. Marshall county—Polk county line.**

That the east and west line dividing the counties of Polk and Marshall, instead of being where it now is, shall be on the south line of township one hundred and fifty-four, from its intersection with the west line of the state in center of the main channel of the Red river on the west, to the east line of said county of Polk. (1885, c. 221, § 1.†)

***§ 51a. Norman county.**

That all that portion of the territory of the present county of Polk south of the line running east and west between townships one hundred and forty-six and one hundred and forty-seven, be and the same hereby is established as the county of Norman, and the county-seat of said county shall be at the town of Ada. (1881, c. 92, § 1.||)

***§ 56a. Pipestone county declared organized.**

The county of Pipestone is hereby declared to be a legally organized county.

*With provisions legalizing official acts.

†County-seat of Marshall county established at Warren, by Gen. Laws 1881, Ex. Sess. c. 86.

‡§§ 2-10 provide for the submission of the act to the electors of the counties, transcribing the records, taxation, etc. The act is in substance the same as Gen. Laws 1881, c. 112.

Gen. Laws 1883, c. 81, § 1, provides: "All the territory lying between the southern line of Marshall county as now established, and the northern line of Polk county as now established, is hereby attached to, and shall hereafter form a part of, the county of Marshall, and the northern line of Polk county as now established by law, to-wit: 'Beginning in the middle of the main channel of the Red River of the North, opposite the mouth of Turtle river, and running thence due east,' to the eastern line of said Marshall county prolonged south,—shall be and is hereby established as the southern boundary line of said Marshall county." §§ 2, 3, provide for submitting the act to the electors of Marshall county for adoption.

|| With further provisions for submitting the act to the electors of Polk county, the appointment of officers, transcribing records, indebtedness and taxation, terms of court, etc. (*Id.* §§ 2-12.)

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with all the rights, privileges, powers, and immunities of organized counties within the state of Minnesota. (1879, c. 63, § 1.*)

*§ 70a. Stevens county declared organized.

The county of Stevens is hereby declared to be an organized county of this state, with all [the] due power belonging to organized counties under the laws of this state. (1881, c. 129, § 1.†)

*§ 73a. Traverse county.

That the county of Traverse in this state, which is hereby declared to be embraced within the following boundaries, to-wit: Beginning in the center of the channel of the Bois des Sioux river, at the intersection of the line between townships one hundred and twenty-nine and one hundred and thirty; thence easterly on said township line to the north-east corner of said township one hundred and twenty-nine north, range forty-five west; thence southerly on the line between ranges forty-four and forty-five to the south-east corner of township one hundred and twenty-five, range forty-five; thence westwardly on the line between townships one hundred and twenty-four and one hundred and twenty-five, to the western boundary of the state; thence on said boundary line, passing through Lake Traverse and along the Bois des Sioux river to the place of beginning,—be and the same is hereby declared to be an organized county, with all the rights, privileges, and immunities of other organized counties within this state. The county-seat shall be located at Brown's Valley until the next general election. (1881, c. 130, § 1.‡)

§ 75. (Sec. 69.) Wadena county.||

§ 81. (Sec. 74.) Wright county.

As to the boundary between this county and Hennepin county, see *Guilder v. Town of Otsego*, 20 Minn. 74, 77, (Gil. 59, 63.)

*§ 82a. Change of county lines.

That the county line of any unorganized county in this state shall not be changed or the territory of such unorganized county be annexed in part or in whole to any organized county as a part of such organized county without first submitting the proposition for such change of line or annexation to the electors of the county or counties to be effected thereby, to be voted upon at the next general election after permission is granted therefor, and the same must be adopted by the majority of the electors voting therein in each county effected thereby. (1887, c. 119.)

TITLE 2.

ORGANIZATION, POWERS, AND DUTIES.

§ 83. (Sec. 75.) Powers of counties.

There is nothing in this section or in §§ 87 and 91, respecting the mode of suing and serving process on counties, limiting them to any class of actions, or indicating an exception to the ordinary remedy by action in favor of suitors, but all the provisions are general in their character, and applicable to any action against a county. *Murphy v. County of Steele*, 14 Minn. 67, 69, (Gil. 51, 52.) See, also, *Commissioners Mower Co. v. Smith*, 22 Minn. 97, 108.

*§§ 2-5 relate to validating the election of county officers, the establishment of a county-seat, etc.

†§ 2 legalizes all official acts performed since the organization of the county in 1871.

‡§ 2, 4, provide for submitting the act to a popular vote.

§ Gen. Laws 1883, c. 79, providing for the transfer of certain territory from Cass county to Wadena county, was not adopted by the electors of Wadena county.

Action by county against treasurer for conversion of public lands—What may be recovered. Commissioners Mower Co. v. Smith, 22 Minn. 97.

A county has no capacity to become purchaser of real estate sold on execution in its favor where the purchase is not made for the public use of the county. Williams v. Lash, 8 Minn. 496, (Gil. 441;) followed in Shelley v. Lash, 14 Minn. 498, (Gil. 373.) A county may acquire title to land by taking the same in satisfaction of a lawful claim against its debtor. Shepard v. County of Murray, 33 Minn. 519, 24 N. W. Rep. 291. Limitations on right of county to acquire, use, and dispose of property. State v. Foley, 30 Minn. 350, 15 N. W. Rep. 375. What deed will convey fee-simple to a county. McKusick v. County of Washington, 16 Minn. 151, (Gil. 135.)

County cannot erect or improve buildings for the use of other municipal corporations, nor bind itself by contract to hold real estate for the benefit of third parties. Borough of Henderson v. County of Sibley, 28 Minn. 515, 11 N. W. Rep. 91.

§ 86. (Sec. 78.) Counties to provide buildings.

See note to § 83, *supra*.

§ 88. (Sec. 80.) Title of actions.

As to actions against counties to test the validity of forfeitures of land for non-payment of taxes, see Willard v. Commissioners Redwood Co., 22 Minn. 61. See, also, as to suits by counties, Commissioners Mower Co. v. Smith, 22 Minn. 97.

§ 89. (Sec. 81.) Appeal from board of county commissioners.

The right of appeal is general, and not limited to cases of claims on which an action could be brought in case of a refusal by the commissioners. Ryan v. County of Dakota, 32 Minn. 138, 19 N. W. Rep. 653.

The claimant is not confined to his remedy by appeal, but may bring an original action therefor. Murphy v. Commissioners Steele Co., 14 Minn. 67, (Gil. 51.)

Where an appeal is taken by a county attorney from the allowance by the commissioners of a claim against the county, the cause of action set up in the complaint must be identical with the subject-matter charged for in the bill presented to and allowed by the board. Thomas v. Commissioners Scott Co., 15 Minn. 324, (Gil. 254.)

§ 90. (Sec. 82.) Proceedings on such appeal.

See note to § 89, *supra*.

***§ 91a. Change of county-seat.**

Whenever a majority of the freeholders, who are legal voters and residents of the county, shall present to the board of county commissioners of such county a petition signed by them asking a change of the county-seat to some other place in said county, such place to be designated in said petition, it shall be the duty of such board of county commissioners to submit the question of the change and removal of the county-seat of such county to the place designated in said petition to a vote of the qualified electors of such county in the manner herein provided, and subject to the provisos and conditions herein contained. (1885, c. 272, § 1.)

This act is unconstitutional. Nichols v. Walter, 33 N. W. Rep. 800; Weber v. Timlin, 34 N. W. Rep. 29. See State v. Ostrom, 35 Minn. 480, 29 N. W. Rep. 585; State v. Wiswell, 35 Minn. 480, 29 N. W. Rep. 586.

***§ 91b. Same—Election.**

Such election shall be held only on the day of the general election for state and county officers, and shall be conducted and the votes canvassed, certified, returned, and recorded in the same manner as other votes cast at said election. (*Id.* § 2.)

***§ 91c. Same—Notice.**

Upon receipt of said petition by the board of county commissioners, it shall be filed in the office of the county auditor of such county, and shall be open to public examination and inspection, and the auditor shall give public notice of such filing by publishing for four successive weeks, in all the newspapers of said county, a notice containing the substance of the petition, the date of filing

the same, and the number of names signed or attached thereto, and if there is no paper printed and published in said county, then by posting or causing to be posted three copies of said notice in each organized town in said county for the same length of time, and no action shall be taken on said petition until the expiration of such period of notice and publication. (*Id.* § 3.)

***§ 91d. Same.**

The board of county commissioners of such county, after due notice of the filing of said petition has been given as herein provided, shall give at least four weeks' notice of such election by publishing the same in all the newspapers printed and published in such county, and if there is no newspaper printed and published in such county, then by posting or causing to be posted three copies of said notice in three of the most public places in each organized town in said county for the same time. (*Id.* § 4.)

***§ 91e. Ballots.**

At such election those voting on such question of change or removal of the county-seat shall deposit their ballots in a separate box to be provided for that purpose. The ballots used at such election shall have printed or written, or partly printed and partly written, thereon the words: "For change of county seat to ———, yes. For change of county seat to ———, no." (*Id.* § 5.)

***§ 91f. Result of the election—Resubmission.**

If a majority of all the voters present and voting at such election shall vote in favor of such change of county-seat, it shall be the duty of the chairman of the board of county commissioners to certify to the same, with the attestation of the county auditor, to the governor of the state, who thereupon shall issue his proclamation to that effect, and cause the same to be published and printed in some newspaper printed and published at the capital of the state, and from the date of such proclamation the place so designated shall be the county-seat of such county. But if there shall not be a majority of such votes in favor of such change, then it shall not be lawful for the county commissioners to again submit the question of the change or removal of the county-seat at any time within five years from the time such election is held: *provided*, that in all counties where the question of the change or location of the county-seat therein has heretofore been submitted to a vote of the electors of such county, and the county-seat therein has been fixed or located by such vote, no such county-seat, so fixed or located, shall be changed or removed under the provisions of this act unless three-fifths of all the voters present and voting at such election shall vote in favor of such change or removal. (*Id.* § 6.)

TITLE 3.

COUNTY COMMISSIONERS.*

§ 92. (Sec. 84.) Board of county commissioners.

Every county shall be deemed an organized county for the purposes of this title, and shall have a board of county commissioners. In those counties which are organized into townships, and which poll eight hundred votes or more, the said board shall consist of five members, and in all other counties of three members, whose term of office shall be four years, and until their successors are elected or appointed and qualified. (*As amended* 1885, c. 6, § 1.)

It was not the intention, in title 3, to organize all the counties, except so far as was done by entitling each county to a board of county commissioners, nor to provide that each county should have all the officers referred to in the title. *State v. Parker*, 25 Minn. 215, 221; followed in *Smith v. Anderson*, 33 Minn. 25, 27, 21 N. W. Rep. 841.

*For provisions in reference to burial of deceased soldiers, see *post*, c. 124.

§ 95. (Sec. 87.) Counties without township organization.

Every county which has not a township organization shall be divided into three commissioner districts, which shall contain as near an equal number of electors as convenient, and in one of each of said districts a commissioner shall be elected, and the person elected from district number one shall hold his office for the term of two years; the person elected from district number two shall hold his office for the term of four years; and the person elected from district number three shall hold his office for the term of two years; and commissioners shall be elected thereafter for the term of four years: *provided*, that if the county commissioners are not elected as herein provided for, they shall be appointed by the governor from the qualified electors of the said county, and shall qualify in the same manner as commissioners elected in accordance with general laws: *provided, further*, that the term of all county commissioners, elected at the general election in November, one thousand eight hundred and eighty-four, shall expire on the first Monday of January, one thousand eight hundred and eighty-seven. (*As amended* 1885, c. 6, § 2.)

§ 96. (Sec. 88.) Commissioners—Term of office.

At the first election, when the board of county commissioners will consist of five members, the persons elected from districts numbered one, three, and five shall hold their offices for the term of two years, and the persons elected from the districts numbered two and four, for the term of four years, and thereafter the commissioners elected shall hold for the term of four years; and in every county where the board of county commissioners will consist of three members, the persons elected from districts numbered one and three shall hold their offices for two years, and the person elected from district numbered two, for four years; and thereafter the commissioners elected shall hold office for the term of four years: *provided*, that the term of all county commissioners elected at the general election in November, one thousand eight hundred and eighty-four, shall expire on the first Monday of January, one thousand eight hundred and eighty-seven. (*Id.* § 3.)

§ 100. (Sec. 92.) Pay of county commissioners.

The county commissioners shall each receive three dollars per day for each day they are necessarily employed in transacting the county business, and ten cents per mile for every mile necessarily traveled in going to and returning from the meetings of the board, or in the discharge of any official duty, under the direction of the board, computed by the nearest traveled route; but no commissioner shall receive pay for more than twenty days' attendance at meetings of said board, or mileage for attendance upon more than six sessions in any one official year, nor pay for more than twenty-five days for all his services as commissioner in any one year; and the county auditor, in drawing his warrant upon the county treasurer for the pay and traveling fees prescribed in this section, shall specify upon the face of said warrant the number of days of service and the amount of mileage for which such warrant is issued; and any county auditor who shall issue his warrant for the payment of any amount in excess of the pay and traveling fees prescribed in this section, shall forfeit to the county the amount of such excess, to be deducted from his salary: *provided*, that whenever extra meetings of the board of county commissioners are rendered necessary to protect the property and interests of the county, because of the default, malfeasance, or misconduct in office of any county officer, or because of the erection or repair of county buildings, the commissioners may receive mileage and pay for the attendance at so many meetings and so many days as are necessary for said sessions, in excess of the limits hereinbefore prescribed. The provisions of this act shall not affect the pay and traveling fees of the commissioners of any county where pay and fees are now provided for by a special law regulating the same: *and provided, further*, that

the provisions of this act,* so far as the same limits the number of days in each year that such commissioners shall draw pay, or fixes the number of sessions for attendance upon which such commissioners shall be entitled to mileage, shall not apply to the commissioners of Otter Tail county: *provided, further*, that the number of days for which said commissioners shall draw pay shall not exceed fifty days in one year. (*As amended* 1873, c. 44, § 1; 1881, c. 52, § 1; 1881, *Ex. Sess.* c. 28, § 1;† 1881, *Ex. Sess.* c. 37, § 1; 1885, c. 88.)

§ 102. (Sec. 94.) Meetings of county commissioners.

The board of county commissioners shall meet at the county-seat of their respective counties, for the purpose of transacting such business as may devolve upon or be brought before them, on the first Tuesday of January and on the fourth Monday of July, in each year; and may hold such extra sessions as they deem necessary for the interest of the county. Such extra sessions shall be called by a majority of the board, and the clerk shall give at least ten days' notice thereof to the commissioners; but no regular session shall continue longer than six days, and no extra session longer than three days: *provided*, that the limitation prescribed in this section relative to the length of regular and extra sessions shall not apply to the county commissioners of Otter Tail county: *provided*, that the board of county commissioners of the counties of Sibley, Yellow Medicine, and Nicollet shall meet at the county-seat on the second Monday of July in each year, in lieu of the fourth Monday of July.‡ (*As amended* 1874, c. 74, § 1; 1885, c. 87; 1885, c. 99; 1887, c. 96.)

*§ 102a. Meetings to fill vacancies.

In all cases of vacancy occurring in any office which is authorized to be filled by appointment of the board of county commissioners, the board of county commissioners shall meet at their usual place of meeting, upon one day's notice from the chairman or clerk of said board, such notice to be served personally upon each member of such board in the same manner as summons in the district court is authorized to be served. (1881, *Ex. Sess.* c. 6, § 1.)

*§ 104. Vacancies.

That whenever any vacancy shall occur in any office of county commissioner, from death, resignation, removal, or otherwise, more than thirty days before any general election for county officers, the chairman of the board of supervisors in each town, and the presiding officer of any incorporated village or villages, city or cities, which may be included in any commissioner's district, when such vacancy shall happen, or a majority of such officers, shall assemble at the court-house at the county-seat, and appoint or elect a person who is a resident of such district to fill such vacancy; and the person so elected or appointed shall continue in office until the next general election, and until his successor is elected and qualified: *provided*, that whenever any such vacancy shall occur in any commissioner's district which is comprised wholly within the limits of any incorporated city, then such vacancy shall be filled by the common council of such incorporated city; that the person elected or appointed under the provisions of this act shall receive a certificate thereof, and shall file his certificate of election in the office of the district court of his county, and shall take the oath of office and qualify in the manner now prescribed for county commissioners; that the absence of any county commissioner from his county for six successive months shall be deemed a vacancy of his office within the meaning of this act; that whenever a vacancy occurs in the office of commissioner as aforesaid, it shall be the duty of the county auditor to im-

* Gen. Laws 1881, *Ex. Sess.* c. 28.

† Note *Id.* c. 37, relative to Goodhue county, previously passed.

‡ Gen. Laws 1887, c. 33, further amends this section by striking out the word "fourth" in the fourth line, and inserting the word "second," the act applying to Wright county only.

mediately give notice thereof to such chairman and presiding officer. (1887, c. 173, § 1.)*

Cited, *State v. Benedict*, 15 Minn. 198, 203, (Gil. 153, 158.)

§ 105. (Sec. 96.) Seal—Proceedings—Evidence and publication.

The commissioners shall have and use the seal of the auditor of their county as their common seal, and copies of their proceedings, when signed, sealed, and attested, as provided by law, shall be evidence of such proceedings in any of the courts of this state, and the county commissioners shall cause their official proceedings of each session to be published in some newspaper printed and published in their county: *provided*, that in the counties of Hennepin and Ramsey the proceedings may be printed in a daily paper, and one weekly paper printed and published at the respective county-seats of said counties; and in all cases, in designating the paper or papers, the character and value thereof as a medium for getting the proceedings before the tax-payers of said counties respectively shall be taken into consideration; [which publications shall be let by contract to the lowest bidder.] (*As amended* 1879, c. 29, § 1.)

§ 106. (Sec. 97.) Chairman.

The chairman has no authority to lease premises for the county, other than that conferred by the board. *Gardner v. Commissioners Dakota Co.*, 21 Minn. 33, 38.

§ 107. (Sec. 98.) Selection of jurors, when and how made.

The board of commissioners, at their annual meeting in January, shall select from the qualified electors of the several election districts of their respective counties, or of the counties attached thereto for judicial purposes, seventy-two persons, properly qualified, to serve as grand jurors, and the same number of persons, properly qualified, to serve as petit jurors, and shall make out separate lists thereof, which lists shall be certified and signed by the chairman of the board, attested by the clerk, and shall be forthwith delivered to the clerk of the district court: *provided*, that if in any county the county commissioners are not able to select the number required by this section for grand and petit jurors, they shall select a less number, and the highest number possible: *and provided, further*, that in the county of Hennepin the number of persons so selected as grand jurors shall be one hundred and thirty-five, and to serve as petit jurors, two hundred and fifty: *and provided, further*, that in all counties where the population shall exceed ten thousand people, no person shall be included in such list who was included in the last previous annual list, and any person having served as a juror for one term of court, shall be retired from such list, and shall not be again drawn during the same year: *and provided, further*, that in counties having two or more terms of court in one year, after the jurors have been drawn for the first or any term of said court, the clerk of said court shall retire from the original list the names of all persons who were drawn for said term, and notify the county commissioners thereof, and it shall be the duty of the county commissioners at the next session thereafter to select new names, equal in number to those retired, and the said clerk shall add the names so selected to the original list. (*As amended* 1877, c. 10, § 1; 1878, c. 18, § 1; 1885, c. 5.)

Although the board may have selected the proper number of names, and had them written down, the list cannot be deemed complete until it is certified, signed, and attested, and the clerk of the court has no authority to draw a grand jury from any list, except such as is made out and certified to him as required by this section. *State v. Greenman*, 23 Minn. 209, 211.

From the certificate of the clerk to the list of petit jurors, that the persons were selected by the county commissioners at a regular meeting in January, it will be presumed that it was done at the annual meeting in January, as required by law. *State v. Gut*, 13 Minn. 341, 348, (Gil. 315.)

* § 104, (sec. 95.) repealed. (*Id.* § 2.)

§ 112. (Sec. 102.) Vacancy in office of register of deeds.

Cited, *State v. Benedict*, 15 Minn. 198, 202, 203, (Gil. 153.)

§ 113. (Sec. 103.) Annual statement of receipts and expenditures.

The board of commissioners, on the first Tuesday in January annually, shall make a full and accurate statement of the receipts and expenditures of the preceding year, which statement shall contain a full and correct description of each item, from whom and on what account received, to whom paid, and on what account expended, together with an accurate statement of the finances of the county at the end of the fiscal year, including all debts and liabilities of every description, and the assets and the other means to discharge the same; and shall, within thirty days thereafter, have the same posted up at the court-house door, and at two other public places in their county, and published in some newspaper therein, if there is one, for three successive weeks. Said board shall, at its meeting in September and January of each year, examine and count all the funds in the treasury, and shall examine the accounts and vouchers of the auditor and treasurer, and make a written certificate of the condition of the treasury, and file the same with the auditor, showing how much money, and what kind, is in the treasury, and all other matters in connection therewith. (*As amended 1872, c. 59, § 1; 1885, c. 111.**)

Cited, *Commissioners Mower Co. v. Smith*, 22 Minn. 97, 112.

County commissioners, in procuring the publication of the annual statement, act under a special statutory authority, and cannot bind the county to pay for the publication of a statement different, or covering another period, from that therein prescribed. *Mitchell v. Commissioners St. Louis Co.*, 24 Minn. 459.

§ 114. (Sec. 104.) Powers of commissioners — Organizing and vacating towns.

The commissioners cannot, upon petition of a number of the inhabitants of an organized town containing no more than thirty-six sections, and without a vote of the people, set off a portion of the territory and organize the same into a separate town. Such proceeding is not authorized by this section or section 2, c. 10, Gen St. Under the last section the petition must be by the town as a corporation, not by the electors. *Town of Mantorville v. Mantor*, 14 Minn. 487, (Gil. 327.)

As to power of the boards to issue bonds of their counties to provide for the erecting and repairing of court-houses, jails, and other necessary buildings for the use of the county, see *Chaska Company v. Supervisors Carver Co.*, 6 Minn. 204, (Gil. 130.)

See note to § 83, *supra*.

*§ 115. Auditing claims.

Clerk cannot charge fees for oaths to jurors and witnesses for the state in criminal cases, on verifying their accounts for *per diem* and mileage. *Wilcox v. County of Sibley*, 34 Minn. 214, 25 N. W. Rep. 351.

§ 119. (Sec. 105.) Commissioners to appoint assessors and overseers.

The board of county commissioners of any county, any part of which is not organized into towns, shall at their stated meeting in January in each year divide such unorganized territory into road and assessment districts, and appoint a person of suitable qualifications as assessor for each district, and one as overseer of roads in each road-district, who shall reside within the limits thereof, and shall respectively possess the powers and perform the duties of a town assessor, and a town overseer of roads, after qualifying as required by law in the cases of such town officers respectively, and shall each hold his office for the term of one year; but nothing herein contained shall be construed to prohibit the commissioners from including all such unorganized territory within one such district. (*As amended 1883, c. 50, § 1.*)

*The amendment of 1885 took effect from and after June 1, 1885.

***§ 125. Commissioners to re-establish section posts.**

The board of county commissioners of any county, where it shall be made to appear to their satisfaction, at any regular or special meeting, that the section posts or monuments established by the United States have been destroyed, or are becoming obscure, shall have power to authorize and direct the county surveyor, and, where there be no county surveyor, then a competent surveyor of the county, to resurvey, relocate, and re-establish such section posts or monuments, by having permanently placed at such government corners an iron or stone or wood post, or monument, of a durable character, of such size and construction as in their discretion may be deemed desirable; and such surveyor shall be paid for such services and expenses out of the general fund of the county; and in making such survey, the said surveyor shall keep full and accurate notes thereof, and shall file a certified copy of the same in the office of the register of deeds of said county. (1875, c. 33, § 1, as amended 1885, c. 47.)

***§ 128a. Extra compensation of auditors and treasurers.**

That the county commissioners of any county in this state, to which any unorganized county is attached, are hereby empowered and authorized to fix annually the extra compensation of the county auditor and treasurer of such county for the additional labor occasioned by such annexation of such unorganized territory: *provided*, that in no case shall such additional compensation be fixed at a greater sum than that provided by law for the compensation of like officials in unorganized counties of like valuation. (1887, c. 195.)

***§ 128b. Commissioners in unorganized counties—Powers.**

That the board of county commissioners of any unorganized county in this state who have been appointed or who shall hereafter be appointed by the governor, or who shall be elected according to law, are hereby authorized and empowered to do and act as hereinafter provided. (1887, c. 189, § 1.*)

***§ 128c. Establishing independent school-districts.**

Said board shall establish independent school-districts in such unorganized counties as needed and demanded by the public, and shall act as trustees of such school-districts established by them, until such time as each of said school-districts shall elect respectively their school board, which board shall be governed by the law as prescribed for the government of school boards in organized counties, and all moneys belonging to such counties accumulated or accumulating from the levy of the general one-mill school tax prescribed by law to be levied, may be paid out on the order of such commissioners respectively, by the treasurer of the county collecting the same, and shall be disbursed by them *pro rata* according to the number of scholars attending school in such districts, in maintaining public schools in said school-districts established by them, and shall be used for no other purpose. (*Id.* § 2.)

***§ 128d. Road-districts—Road tax.**

To organize such road-districts and to lay out and open such roads in said county as shall be necessary for or required by the business of such unorganized county. And the officers of the county to which such unorganized county may be attached for purposes of taxation, shall levy annually a road and bridge tax, not exceeding in aggregate one mill per acre on all the taxable land in said county, as a portion and part of the taxes that may be collected from the property in such unorganized county; and said money shall be paid out by such treasurer of such county only on the order of the commissioners of such unorganized county as hereinafter provided, and shall be ex-

*"An act granting certain powers and authority to the board of county commissioners of any unorganized county in this state." Repealing all inconsistent acts. § 6.

pended by them on roads and bridges in such unorganized county. Nothing in this act shall be construed to authorize the levying of any other or greater tax than is provided by law for taxation of such unorganized counties respectively in this state. (*Id.* § 3.)

***§ 128e. Bond of commissioners—Filing certificate of appointment—Drafts.**

The commissioners of such unorganized county, before entering upon the duties of their office or receiving any moneys under or pursuant to this act, shall make and file with the board of county commissioners to which such unorganized county is attached, a bond, running to said commissioners, with two or more sufficient sureties, to be approved by a judge of the district court of the judicial district in which such unorganized county is situated, in an amount double the amount of such school, road, and bridge tax levy; and shall, with such county commissioners, also file a certificate from the governor or state auditor showing that they have been duly appointed or elected commissioners, of such unorganized county; and all orders on the treasurer for moneys to be paid pursuant to this act [shall] be signed by two of such commissioners. (*Id.* § 4.)

***§ 128f. Compensation.**

The compensation of such county commissioners of unorganized counties shall be two dollars per day, while performing their duties under the provisions of this act, payable out of the one-mill road and bridge tax levy heretofore provided for: *provided*, that such services shall not exceed in the aggregate one hundred days in each year. (*Id.* § 5.)

TITLE 4.

COUNTY AUDITORS.*

§ 134. (Sec. 116.) Vacancy in office of county auditor.

Cited, *State v. Benedict*, 15 Minn. 198, 203, (Gil. 153, 158.)

§ 135. (Sec. 117.) Temporary disability of auditor.

The deputy of the county auditor may act for the auditor in canvassing election returns and issuing certificates of election. *Crowell v. Lambert*, 10 Minn. 369, (Gil. 295.)

§ 138. (Sec. 120.) Ex-officio clerk of board.

As to duties of clerk of the board, see *Supervisors Ramsey Co. v. Heenan*, 2 Minn. 330, 340, (Gil. 281, 292.)

Where a bond is required of a county treasurer at a time when the board of commissioners is not in session, he should deliver the bond to the county auditor. *State v. Sanderson*, 26 Minn. 335, 3 N. W. Rep. 984.

§ 140. (Sec. 122.) Account with treasurer.

Cited, *Commissioners Hennepin Co. v. Jones*, 18 Minn. 199, 207, (Gil. 182, 189.)

§ 141. (Sec. 123.) Claims, how allowed—Money, how disbursed.

No claims against the county shall be paid otherwise than upon the allowance of the county commissioners, upon the warrant of the chairman of the board, attested by the county auditor, except in those cases in which the precise amount is fixed by law, or is authorized to be fixed by some other person or tribunal, in which cases the same shall be paid upon the warrant of the

*As to duties of county auditors in 1881 in relation to the Sioux massacre, see Gen. Laws 1881, c. 121.

Gen. Laws 1883, c. 123, § 2, relating to salaries of treasurer and auditor of counties to which unorganized counties are attached, repealed. 1887, c. 156. See *ante*, *§ 128a.

county auditor, upon the proper certificate of the person or tribunal allowing the same: *provided*, that no public money shall be disbursed by the county commissioners, or any of them, but the same shall be disbursed by the county treasurer upon the warrant of the chairman of the board of county commissioners, attested by the county auditor, specifying the name of the party entitled to the same, on what account, and upon whose allowance, if not fixed by law; and all orders or warrants drawn in payment for services, shall show thereon the specific time for which such services are rendered, and all orders and warrants shall be progressively numbered, and the number, date, and amount of each, the name of the person to whom payable, the purpose for which drawn, and the specific time for which any service was rendered, shall at the time of issuing the same be entered in a book to be kept by the auditor for that purpose. (*As amended* 1879, c. 13, § 1.)

Rights of parties where order payable to bearer is paid to wrong person, when past due. *Sweet v. Commissioners Carver Co.*, 16 Minn. 106, (Gil. 96.)

§ 142. (Sec. 124.) Salaries of auditors — Allowance for clerk hire.

The salary of the county auditors shall be regulated by the value of the property in their respective counties, as fixed by the state board of equalization for the preceding year, as follows: In counties where the amount of taxable property does not exceed the sum of one and one-half million dollars, they shall be entitled to receive six mills on each dollar of the first one hundred thousand dollars, and one mill on each dollar of all amounts in excess of said last-named sum, and less than two hundred thousand dollars, and one-third of one mill on each dollar on all amounts in excess of said last-named sum. In counties where the value of the taxable property for the preceding year, as fixed by the said board of equalization, exceeds the sum of one and one-half million dollars, the county auditor shall be entitled to receive five mills on each dollar of the first one hundred thousand dollars, and one-half of one mill on each dollar of all amounts in excess of said sum and less than two million dollars, and one-fifth of one mill on each dollar of all sums in excess thereof. In [all] counties where the valuation of taxable property exceeds one million dollars, the county auditor shall be allowed for clerk hire one-fifth of one mill on each dollar of such amount of taxable property not exceeding five million dollars, and on all sums in excess of five million dollars, one-twentieth of one mill on each dollar thereafter: *provided*, that no county auditor shall receive more than twelve hundred dollars per annum for his personal services in counties where the valuation does not exceed four million dollars, nor more than fifteen hundred dollars in counties where the valuation exceeds four million dollars, and does not exceed six million dollars, nor more than two thousand dollars in counties where such valuation exceeds six million dollars and does not exceed ten million dollars, nor more than two thousand five hundred dollars where such valuation exceeds ten million dollars. And all moneys received as fees or percentage in excess of the amounts provided for in this act shall be paid by the auditor, at the end of each year, into the revenue fund of the county: *provided*, that the county commissioners of Otter Tail county be and they are hereby authorized, in their discretion, to allow clerk hire for the auditor's clerks in said Otter Tail county, in any sum not to exceed fifteen hundred dollars per annum.* (*As amended* 1877, c. 120, § 1; 1881, c. 68, § 1; 1881, *Ex. Sess.* c. 44, § 1; 1887, c. 23.)

The auditor of Dodge county is entitled to no other compensation than the salary fixed by chapter 209, Sp. Laws 1872. *Bruce v. Commissioners Dodge Co.*, 20 Minn. 388, (Gil. 339.)

*The amendment of 1887, substituting the italicized word "six," *supra*, for "eight," took effect from and after April 1, 1887.

1877, c. 120, §§ 1-3, applicable to Kandiyohi county. 1881, c. 156.

TITLE 5.

COUNTY TREASURERS.*

§ 144. (Sec. 125.) County treasurer.

Cited, *State v. Benedict*, 15 Minn. 198, 201, (Gil. 153, 156.)

§ 145. (Sec. 126.) Bond of treasurer.

The liability of a county treasurer on his bond is absolute, and the fact that money in his keeping is stolen from him without his fault does not exonerate him. *Commissioners Hennepin Co. v. Jones*, 18 Minn. 199, (Gil. 182.)

The sureties on the general bond of a county treasurer are not liable for his failure to pay over moneys collected by him on account of school and university lands. For such default, only his sureties on his special bond, required by Gen. St. c. 38, § 39, are liable. *State v. Young*, 28 Minn. 551.

The treasurer and his sureties, when sued on the bond, cannot set up as a defense their own omission to affix seals thereto. *County Commissioners v. Tower*, 28 Minn. 45, 8 N. W. Rep. 907.

The county commissioners may sue the treasurer, either on the bond or independent of it, for the conversion of county money, and recover for all funds converted, of either or any of the classes enumerated. *Commissioners Mower Co. v. Smith*, 22 Minn. 97.

§ 146. (Sec. 127.) Failure to qualify.

When failure to qualify upon re-election works a vacancy in office of county treasurer. *County of Scott v. Ring*, 29 Minn. 398, 13 N. W. Rep. 181.

§ 147. (Sec. 128.) Vacancy in office of treasurer.

Cited, *State v. Benedict*, 15 Minn. 198, 203, (Gil. 153, 158.)

§ 149. (Sec. 130.) Receipt and payment of money.

The county treasurer shall receive all moneys directed by law to be paid to him as such treasurer, and shall pay them out only upon the order of the proper authority.

All moneys belonging to the county shall be paid out upon the order of the board of county commissioners, signed by the chairman thereof, and attested by the county auditor, (or upon the warrant of the county auditor, upon the presentation to him of the proper certificate of the person or tribunal allowing the same,) and not otherwise.

All moneys due the state, arising from the collection of taxes or from other sources, shall be paid upon the draft of the state auditor drawn in favor of the state treasurer, and a duplicate copy of the receipt for payment of such draft shall be forwarded by the state treasurer to the county auditor, who shall preserve the same, and credit the county treasurer with the amount thereof. (*As amended 1881, c. 11, § 1.*)

When failure to pay draft drawn by state auditor in favor of state treasurer constitutes embezzlement, see *State v. Mims*, (1st Case,) 26 Minn. 183, 2 N. W. Rep. 492, 494.

§ 150. (Sec. 131.) Deposit of funds.

The provision requiring a deposit of the county funds applies to all the funds in the treasury, is valid, and not in conflict with sec. 12, art. 9, of the constitution. *First Nat. Bank of Stillwater v. Shepherd*, 22 Minn. 196.

The depository may be selected before the execution of the bond, but this selection is not to become operative so as to authorize a deposit until the bond is given. *Commissioners Meeker Co. v. Butler*, 25 Minn. 363.

***§ 150a. County funds—Where deposited.**

All the funds of any of the counties in this state shall be deposited by the county treasurer in one or more national banks, or state or private bank or banks, as soon as received, in the name of the proper county of which the board of auditors are officers. Such bank or banks or bankers shall be designated

*See note * to title 4, ante.

For provisions regulating the suspension and removal of treasurers, see post, c. 9.

by said board of auditors, in their discretion, after advertising in one or more newspapers published in their respective counties (or, if the public interests require, in one or more newspapers in other counties) of the state, for at least two weeks, for proposals and receiving proposals, stating what security would be given to said county for such funds so deposited, and what interest on monthly balances of the amount deposited, on condition that said funds, with accrued interest, shall be held subject to draft and payment at all times, on demand. If the board of auditors, at any time after having made such designation, for good and sufficient cause, deem the surety given insufficient, it may require a new bond; and if, in its opinion, the public interests require, it may vacate, revoke, or modify its designation of a depository in any way, and may advertise and again designate a depository or depositories as above: *provided*, that the amount deposited in any bank or banking-house shall not exceed the assessed capital stock of said bank or banking-house as shall appear on the tax-list of the counties. Capital stock, for the purposes of this act, shall be defined as follows: As including shares of capital stock of national or state banks, whether assessed in the name of the bank or of the stockholders thereof; and as including the personal and real-estate property of private banks or bankers, or the individual members of said banking firms, which property is liable for the debts of said banks or bankers, and is assessed upon the tax-lists of any county in this state. In case such property is assessed in counties other than those in which the depository is situated, the assessment shall be certified to by the auditor of the county in which the same is assessed, on application of the board of auditors of any county; and such application shall be renewed annually on the first day of January, and oftener, if deemed necessary; and such certificate shall be attached to the bond of such depository. The treasurer is required, from time to time, to take notice of any changes in the assessment, and to limit the amount of the deposits by such changes in accordance with the provisions of this act: *provided*, that when a bank has been duly organized after an annual assessment in any one year, and before the assessment for the following, the paid-up capital and assets of said bank, less its liabilities, as may appear from the sworn statement of the president or cashier thereof, may be treated as assessed capital. (1881, c. 124. § 1, *as amended* 1883, c. 51, § 1.)

***§ 150b. Bonds of depository.**

Before any national, state, or private bank or banker shall be designated as such depository, such bank or banker shall deposit with such treasurer a bond payable to such county, and signed by not less than five freeholders of the state as sureties, which bond shall be approved by the board of county commissioners, and shall be in such amount as such board shall direct, which amount shall be at least double the amount of funds to be deposited with such bank or banker. It is hereby made the duty of the officers designated, and also of the board of county commissioners of the several counties of the state, to comply with all the provisions of this act: *provided*, that counties in which there are no such bank or bankers may be exempt from the provisions of this act, so far as it relates to depositing the funds of such counties with any such bank or bankers, if, in judgment of the auditing board and board of county commissioners of any such county, it would be detrimental to the interest of such county to make such disposition: *and provided, further*, that in the county of Carver the funds of said county may be deposited with any banker or bankers residing in said county and doing business as a banker therein, notwithstanding the amount of the valuation of the property of such banker or bankers, so long as there is no incorporated bank in said county, if the board of county commissioners of said county shall not otherwise direct, and such banker or bankers shall execute to said county a bond (in addition to the one now required by law) in such sum and with such conditions and sureties

as the state examiner of this state shall fix, prescribe, and approve; and shall also, in all other respects, comply on his part with the provisions of this chapter. (*Id.* § 2, as amended 1881, *Ex. Sess. c.* 43, § 1.)

***§ 150c. Same.**

All bonds required under the provisions of this act shall be given for the term of two years from the date of their execution, and shall be renewed every two years thereafter. The boards of auditors of all the counties having no depositories designated under this act, or not having statutory bonds under this act, shall advertise as herein provided for proposals for the deposit of their funds, such proposals to be opened on the first day of July, 1881. Bonds of depositories now legally in force shall expire on the first day of August, eighteen hundred and eighty-three. But this section shall not be construed as preventing boards of auditors in counties having no depositories from advertising for proposals and designating depositories at any time when the public interests may so require. Whenever, by reason of change in the organization of any bank or banking firm which is a legally designated depository of the public funds, said corporation or firm has ceased to exist, the board of auditors of the proper county are authorized to accept the bond of its successor in the amount and for the unexpired term of the original bond, without advertising and receiving proposals anew; and the commissioners of the county are authorized to approve the same. (1881, c. 124, § 3, as amended 1887, c. 84.)

***§ 150d. Same—Sureties upon bond.**

The boards of auditors shall not accept, and the boards of commissioners shall not approve, as sureties upon the bonds of depositories, the names of stockholders or of owners of such depositories unless they are satisfied upon full investigation that their responsibility would in no wise be affected by the failure of the bank or banker in behalf of which said stockholders or owners sign as sureties. (1881, c. 124, § 4.)

***§ 150e. Deposit to be in official capacity.**

No county treasurer shall deposit in any bank, or with any banker, whether designated under the provisions of this act or not, or in any other place whatever, any public funds in his own individual name, or except in his capacity as treasurer of the county, under the penalty of five hundred dollars for each deposit so made. (*Id.* § 5.)

***§ 150f. Public funds to be kept separate—Deposit exceeding account.**

The public funds shall at all times be kept absolutely intact and free from any mixture with funds belonging to the treasurer as a private person, or in any other capacity, or to any other person or firm, and all amounts found at any time in any of the county treasuries of the state, or officially deposited by the county treasurers, shall be deemed public funds, and if in excess of the amount properly called for by the auditor's and treasurer's books and accounts, shall be turned over by the board of auditors of said county, or by the public examiner, into the county revenue fund. (*Id.* § 6.)

***§ 150g. Payments by treasurers—Account by depository.**

All payments by treasurers of counties having designated depositories at their county-seat, and by all treasurers as far as practicable, shall be made by checks upon the depositories.

Each depository designated under the provisions of this act shall furnish the auditor of the county to which the funds belong a true and itemized statement of the treasurer's account on the first day of each month, which statement shall be filed and carefully preserved in the auditor's office.

All sums of interest accruing upon the funds deposited in any bank, or with any banker, under the provisions of this act, shall be credited to such deposit account on the first day of each month, for the month preceding, and a monthly statement of such interest, as computed from the daily balances by the bank or banker, shall be rendered by such depository to the county auditor on the first day of each month, and the auditor shall charge the county treasurer with the amount thereof, and credit the same to the revenue fund of the county. (1881, c. 124, § 7.)

***§ 150h. Repeal.**

All acts and parts of acts inconsistent with the provisions of this act are hereby repealed: *provided*, that such repeal shall not be considered as altering or impairing the validity or obligations of any bonds of depositories now legally in force, except as to the date of their expiration, as provided in section three of this act. (*Id.* § 8.)

***§ 151. Compensation of board.**

The board of auditors shall each be entitled to the sum of three dollars for each day actually employed in the discharge of their duties under this act, to be paid upon allowance by the board of county commissioners in the same manner as other claims are paid. (1873, c. 38, § 2, *as amended* 1881, c. 48, § 1.)

§ 154. (Sec. 132.) Account by treasurer.

§§ 154-156; cited *Commissioners of Mower County v. Smith*, 22 Minn. 97, 118.

§ 156. (Sec. 134.) Same—Remittance—Draft by state auditor.

Failure or refusal to pay draft drawn by state auditor, when constitute embezzlement on part of county treasurer. *State v. Mims*, 26 Minn. 188, 2 N. W. Rep. 492, 494.

§ 158. (Sec. 136.) Action against treasurer.

For illustrative cases brought under this section, see *Commissioners of Hennepin County v. Jones*, 18 Minn. 199, (Gil. 182;); *Commissioners of Mower County v. Smith*, 22 N. W. Rep. 97.

§ 159. (Sec. 137.) Removal of treasurers.*

§ 164. (Sec. 142.) Failure to give new bond.

Upon failure to give the new bond for ten days, the office becomes *ipso facto* vacant. No judicial determination is needed. The commissioners should proceed at once to appoint another treasurer. *State v. Sanderson*, 26 Minn. 335, 3 N. W. Rep. 984.

§ 166. (Sec. 144.) Misappropriation of funds.

It does not follow that, because the county treasurer is prohibited from speculating in or loaning or using the county funds, he therefore becomes a simple bailee of the county. He is a debtor, not a mere bailee. *Commissioners of Hennepin County v. Jones*, 18 Minn. 199, 207, (Gil. 182, 189.)

§ 167. (Sec. 145.) Publishing statement of county affairs.

An act legalizing a previously unauthorized publication *held* valid. *Fuller v. County*, 36 Minn. 309, 30 N. W. Rep. 824.

§ 169. (Sec. 147.) To pay and deface orders.

The county treasurer, when any order or warrant drawn on him as treasurer, either by the county auditor or signed by the chairman of the board of county commissioners, and attested by the auditor, is presented for payment, shall, if there is money in the treasury for that purpose, redeem the same, and shall

*See *post*, c. 9.

write across the entire face of all such orders and warrants, and in such way as to effectually cancel the same and prevent their being again issued, the word "Redeemed," the date of the redemption, and his official signature. County orders properly drawn and attested shall be entitled to preference as to payment according to the time when presented, of which a record shall be kept by the county treasurer, and upon receipt of money into the treasury the treasurer shall appropriate and set apart the money necessary for the payment of the county orders so presented and registered, and if entitled to interest the treasurer shall issue to the original holder thereof a notice that interest shall cease in thirty days from the date of such notice, and if orders thus entitled to priority of payment are not then presented the next in order of registry may be paid until such orders are presented. No interest shall be paid on any order except upon a warrant drawn by the county auditor for the purpose, giving the number and date of the order on account of which the interest warrant is drawn. (*As amended 1879, c. 33, § 1.*)

As to the power to issue county orders under Rev. St. 1851, c. 8. p. 65, see *Goodnow v. Commissioners of Ramsey County*, 11 Minn. 31, (Gil. 12.)

When payment of order by treasurer, in good faith, discharges county, notwithstanding order is past due and holder's title defective, see *Sweet v. Commissioners of Carver County*, 16 Minn. 106, (Gil. 96.)

§ 170. (Sec. 148.) To deposit orders—Auditor's duties.

The treasurer shall deposit with the auditor of his county on the day of redemption all orders and warrants on the treasury by him redeemed, and he may take the auditor's receipt therefor. He shall enter the same, with date of payment, in his register of orders paid, and credit himself daily upon his journal and ledger with the amount thereof. The auditor shall cancel the same immediately upon his register of orders issued, and at the close of the day credit the treasurer with the same upon his journal and ledger. (*As amended 1879, c. 33, § 1.*)

§ 172. (Sec. 150.) Compensation of county treasurers.

The county treasurer shall be allowed, at the time of his settlement, all sums paid by him for printing such advertisements as he is required, at the rates prescribed by law, and all the sums paid by him for blank-books and stationery necessarily used in his office; and shall receive for his services one-half of one per cent. as fees for receiving and disbursing all moneys on account of sales of school lands or the payment of interest on school lands, to be paid him upon the warrant of the state auditor; and all other moneys by him collected or received as such county treasurer for each year's services, as follows: Four and one-half cents on each dollar for the first ten thousand dollars, three cents on each dollar on the second ten thousand dollars, and two cents on each dollar on all sums over twenty thousand dollars and less than sixty thousand dollars, and one per cent. on each dollar on all sums over sixty thousand dollars, to [be] paid on the warrants of the county auditor out of the revenue fund of the county: *provided*, that no compensation be allowed the treasurer on any moneys received from his predecessors in office or his legal representatives, or on any moneys received from the current school fund of the state apportioned by the superintendent of public instruction: *provided*, that no treasurer shall receive more than twelve hundred dollars for his personal services in any one year, in counties where the valuation of taxable property is less than four million dollars; nor more than fifteen hundred dollars in counties where the valuation of the taxable property exceeds four million dollars and does not exceed six million dollars; nor more than two thousand dollars where such valuation exceeds six million dollars and does not exceed ten million dollars; nor more than two thousand five hundred dollars where such valuation exceeds ten million dollars; and all moneys received as fees or percentage, in excess of amount provided for in this act, shall be

paid by the county treasurer, at the end of each year, into the revenue fund of the county: *provided*, that the county commissioners of Otter Tail county may, in their discretion, allow the county treasurer of said Otter Tail county such sums as they shall deem just, not to exceed in any one year the sum of twelve hundred dollars, for clerk hire in the treasurer's office and for clerk hire and expenses in visiting towns in said county to collect personal property tax: *provided, further*, that whenever the salary of the county treasurer is limited to a fixed sum by the second proviso of this section, said fixed sum shall be paid in the manner provided above, at the end of each month, in twelve equal installments, and no treasurer receiving pay for his services under said second proviso, whose salary cannot be certainly and exactly fixed at the beginning of his official year, shall receive more than one-twelfth of his annual salary at the end of each month as carefully estimated and recorded by the board of county commissioners at their January meeting in each year, and the balance of the year's pay found to be legally due the treasurer shall be paid him on the computation of said board of commissioners at their next January meeting.* (*As amended* 1877, c. 120, § 3; 1881, c. 38, § 1, and c. 68, § 2; 1885, c. 16; *Id.* c. 89; 1887, c. 31.)

Where the valuation of taxable property exceeds six million dollars, and does not exceed eight million dollars, the treasurer is entitled to the full amount of the percentages, as the proviso does not cover such a case. *Doe v. County of Washington*, 30 Minn. 392, 15 N. W. Rep. 679.

When appointed for a period less than a year, the treasurer is entitled to the percentage on moneys collected by him, though it exceeds the proportionate amount, for such part of a year, as limited by the proviso. *Beatty v. County of Sibley*, 32 Minn. 470, 21 N. W. Rep. 548.

County treasurer not entitled to an allowance for his board, traveling expenses, and clerk hire, when required by the county commissioners, under Laws 1877, c. 97, to visit certain localities in the county for the collection of taxes. *Yost v. Commissioners of Scott Co.*, 25 Minn. 367.

See, also, *Commissioners of Hennepin County v. Jones*, 18 Minn. 199, 201, (Gil. 182, 184.)

§ 173. (Sec. 151.) To deliver county funds and property to successor.

No demand on the part of the successor in office is essential. *Commissioners of Redwood Co. v. Tower*, 28 Minn. 45, 8 N. W. Rep. 907.

Refusal or improper neglect to pay over constitutes embezzlement. *State v. Ring*, 29 Minn. 85, 11 N. W. 233.

TITLE 6.

REGISTER OF DEEDS.

§ 175. (Sec. 153.) To take oath and give bond.

Every register of deeds, before he enters upon the duties of his office, shall take and subscribe the oath prescribed by law, which said oath shall be indorsed on the certificate of his election or appointment, and he shall also give a bond, payable to the state of Minnesota, with good and sufficient sureties, in the penal sum of five thousand dollars, to be approved by the board of county commissioners of his county, conditioned that he will faithfully and impartially fulfill the duties of his office. Said bond and oath of office shall be recorded in the office of the clerk of the district court of the county in which said register's office shall be situated, and forwarded by said clerk to the secretary of state. (*As amended* 1879, c. 3; 1881, c. 60, § 1; † 1883, c. 47, § 1.)

As to the qualifying of the register under Rev. St. 1851, see *Harkins v. Sencerbox*, 2 Minn. 344, (Gil. 297.)

*Last proviso took effect from and after January 1, 1886. Gen. Laws 1877, c. 120, §§ 1, 2, 3, applicable to Kandiyohi county. Gen. Laws 1881, c. 156. Clerk hire in said county, see *Id.*

†§ 2 repeals Gen. Laws 1879, c. 3, relating to register of deeds.

§ 176. (Sec. 154.) To deliver records to successor.

Cited, *State v. Benedict*, 15 Minn. 198, 203, (Gil. 153, 159.)

§ 177. (Sec. 155.) Books to be kept by register.

The column headed "where situated" was designed to contain a description of the land so that any person making a search could ascertain from the reception books whether a grantor had made any conveyance. A register who fails to insert the descriptions in this column is not entitled to any compensation from his county for keeping the reception books. *Mapes v. Commissioners of Olmsted County*, 11 Minn. 367, (Gil. 264.) See, also, *Gaston v. Merriam*, 33 Minn. 271, 276, 22 N. W. Rep. 614.

Where it is claimed that the description of the premises contained in a lost deed is incorrectly described in the full record, it is competent to introduce in evidence the description contained in the entry made in the reception book also, in connection therewith, to show that the grantor owned the property described in the reception book, but had no title to that described in the full record. *Gaston v. Merriam*, 33 Minn. 271, 22 N. W. Rep. 614.

The provision goes no farther, at most, than to make the certificate, either with or without the entry after the record, provided for in this section, conclusive as to the time of the receipt and record of an instrument recorded. *Thorp v. Merrill*, 21 Minn. 336, 339.

Under chapter 2, Sess. Laws 1857, a register of deeds is entitled to compensation from his county for making the entries in the reception books provided for by that chapter. *Hough v. Commissioners of Ramsey County*, 9 Minn. 23, (Gil. 11.) Registers of deeds are not entitled to compensation from the county for keeping the reception books required by this section. *Nordin v. Commissioners Kandiyohi Co.*, 23 Minn. 171; distinguishing *Hough v. Ramsey County*, 9 Minn. 23, (Gil. 11.) and *Mapes v. Olmsted County*, 11 Minn. 367, (Gil. 264.)

§ 179. (Sec. 156.) Records to be public—Abstracts by private persons—Bond—Recording fees.

The register shall exhibit free of charge, during the hours that his office is, or is required by law to be, open, any of the records or papers in his official custody, to the inspection of any person demanding the same, either for examination, or for the purpose of making or completing an abstract or transcript therefrom: *provided*, that whenever, in the opinion of the board of county commissioners, it is for the benefit of the people of their county, that any person, company, or corporation, who has or may have a set of abstracts of title, should be permitted to occupy any part of the county building for an office, such board may, by resolution, give such person, company, or corporation permission so to do. And in every such case such board shall require of such person, company, or corporation a bond in a sum not less than five hundred dollars, nor more than five thousand dollars, with two or more sureties, to be approved by the commissioners, conditioned that such person, company, or corporation will handle all public records belonging to the county with due care, and will not charge any greater fee for making abstracts than is or may be allowed the register of deeds for like services, and for the faithful performance of his duty as an abstractor: *provided, further*, that nothing contained in this act shall be construed as giving any person the right to have or use the said records for the purpose of making or completing an abstract or transcript therefrom when it would interfere or hinder the register of deeds in the performance of his official duties, or as permitting any person to take any of said records from the register of deeds' office without his consent. But no register of deeds is bound to record any deed, mortgage, or other instruments unless the fees therefor are tendered him in advance. (*As amended 1885, c. 116.*)

The right of inspection under the section as amended in 1885, is not limited to persons interested in the records. *State v. Rachac*, 35 N. W. Rep. 7.

§ 180. (Sec. 157.) Record books and indexes.

In determining the appropriate book in which to record an instrument, whether as deed or mortgage, regard is to be had to its terms alone, and not its legal effect, when taken in connection with some other instrument. *Benton v. Nicoll*, 24 Minn. 221, 228.

What is a recording "at large and in full, word for word," see *Carli v. Taylor*, 15 Minn. 171, 172, (Gil. 131, 132;) and see *Whittacre v. Fuller*, 5 Minn. 508, (Gil. 401.)

MINNESOTA STATUTES 1888 SUPPLEMENT

***§ 180a. Numbering instruments for record.**

Every register of deeds shall indorse plainly upon the top of the back, when folded, of each instrument or paper received by him for record or filing, as soon as received, a number consecutive to the number affixed to the instrument next previously received, and shall enter such number as a part of the entry relating to such instrument or paper in all the indexes kept in his office and on the margin of the record of such instrument, and such number shall be *prima facie* evidence of priority of registration; *provided*, that when the register of deeds shall receive by mail, or other like inclosure, more than one instrument at the same time he shall affix such number in the consecutive order in which such instruments actually come to his hand in opening such inclosures, save that when more than one instrument is received from the same source, at the same time, he shall follow such directions, if any, as the sender may give in such numbering. (1887, c. 199, § 1.)

***§ 180b. Index.**

Every register of deeds shall keep an index of all records or files kept in his office, showing the number of the instrument or paper consecutively, the kind of instrument or paper, the time of its reception, and where the same is recorded or filed, thus:

Number of Instrument.	Kind of Instrument.	Time of Reception.	WHERE RECORDED OR FILED.		
			Book.	Page.	File No.

—And shall make, or cause to be made, therein the entries mentioned, as soon as each instrument or paper is received by him, excepting only the place of record, which shall be filled in as soon as the instrument or paper is recorded. (*Id.* § 2.)

***§ 180c. Fees.**

For such numbering and entry, as aforesaid, the register of deeds shall be entitled to a fee of five cents for each instrument or paper numbered and entered, in addition to the fee for recording or filing, heretofore prescribed by law. (*Id.* § 3.)

***§ 180d. When to take effect.**

This act shall take effect and be in force from and after the first day of April, A. D. 1887, on which time in each county in the state of Minnesota the first instrument received by the register for record or filing shall be numbered one. (*Id.* § 4.)

§ 183. (Sec. 160.) Abstracts of title.

§ 186. (Sec. 163.) Seal.

Necessity of seal to authentication of affidavits sworn to before register of deeds, see *Colman v. Goodnow*, 36 Minn. 9, 29 N. W. Rep. 388.

* Amended, as to Renville county only, by Gen. Laws 1887, c. 46.

TITLE 7.

SHERIFFS.

§ 192. (Sec. 164.) Sheriffs.

Cited, *Beebe v. Fridley*, 16 Minn. 518, (Gil. 467.)

§ 193. (Sec. 165.) Oath and bond.

Validity of acts of *de facto* sheriff—What irregularities in qualifying will be disregarded—When delivery of bond will be implied. *Commissioners of Ramsey County v. Brisbin*, 17 Minn. 451, (Gil. 429.)

§ 195. (Sec. 167.) Powers and duties.

It is not his duty to pursue and apprehend felons, except where authority to arrest is given either by warrant, or by the statute without a warrant. *Warner v. Grace*, 14 Minn. 487, 489, (Gil. 364, 366.)

Sheriff, when executing a void writ, is a mere trespasser, and not protected by his official character. *Castle v. Thomas*, 16 Minn. 490, (Gil. 443.)

See *Butler v. White*, cited in note to section 202, *post*.

§ 196. (Sec. 168.) Vacancies.

Cited, *State v. Benedict*, 15 Minn. 198, 203, (Gil. 153, 158.)

§ 198. (Sec. 170.) Failure to account for collections.

If any sheriff or deputy-sheriff fails to settle with and pay over to the board of county commissioners, according to law, any money collected or received by him for the use of or belonging to the county, or shall fail to settle with and pay over to the person or persons entitled thereto any money he may have collected or received by virtue of any execution, process, judgment, order, or decree, or in any other way by virtue of his office, such board of county commissioners, or such person or persons, may proceed against such sheriff and deputy-sheriff in a summary manner before the district court by an order upon him to show cause why he should not pay over such money; and upon the hearing thereof the court may order such sheriff or deputy-sheriff to pay to such board of county commissioners, or to the person or persons so entitled thereto, the amount found due, with twenty per centum thereon as damages for such failure, together with all costs of the proceedings under this section; and, upon failure to comply with such order, he may be committed to jail as for a contempt. (*As amended 1885, c. 74.*)

This provision is not peremptory. The court has discretion, in a proper case, to dispense with the twenty per cent. penalty. *Coykendall v. Way*, 29 Minn. 164, 12 N. W. Rep. 452.

The order to the sheriff to show cause is appealable as "a final order affecting a substantial right, made * * * upon a summary application, in an action after judgment." *Coykendall v. Way*, 29 Minn. 163, 12 N. W. Rep. 452.

§ 199. (Sec. 171.) Neglect of duty—Penalty.

The court whence the execution issued may enforce the "performance of the duty," or the "correction of the injury done," by commitment, as provided in § 198. *Breuer v. Elder*, 33 Minn. 150, 22 N. W. Rep. 622.

The order to show cause may be issued by a judge of the district court whence the execution issued, and be made returnable to that court. *Breuer v. Elder*, 33 Minn. 149, 22 N. W. Rep. 622.

§ 200. (Sec. 172.) Taking illegal fees—Penalty.

Applied, *Thomas v. Commissioners of Scott County*, 15 Minn. 324, 325, (Gil. 254, 256.)

§ 202. (Sec. 174.) Outgoing sheriff—Execution of process.

Where a sheriff levies an attachment in an action, an execution on the judgment in the action, issued after such sheriff goes out of office, should be delivered to, and executed by, the sheriff in office when it issues. *Butler v. White*, 25 Minn. 432, 440.

§ 206. (Sec. 178.) Deputy-sheriffs.

The sheriff has the exclusive power of appointing a deputy to act as jailer, though such appointment is not effectual and complete until approved by the judge of the district court for the county. Such jailer can be removed by the sheriff only. *State v. McIntyre*, 25 Minn. 383, 385.

Where a judgment directs a sale to be made by the sheriff, it may be made by his deputy. *Hotchkiss v. Cutting*, 14 Minn. 537, (Gil. 408.)

A sheriff is not liable for an unofficial act of his deputy, though subsequently he expressly approve of it, and both believe the act official, and it is done by the deputy as official. *Dorr v. Mickley*, 16 Minn. 20, (Gil. 8.)

A sheriff may lawfully assign to a deputy all the fees pertaining to the services to be rendered by such deputy. *Pioneer Printing Co. v. Sanborn*, 3 Minn. 413, (Gil. 304.)

***§ 208. Deputy-sheriffs attending court.**

The clerk of the district court cannot charge fees for administering oaths to the deputy-sheriffs in attendance, in verification of their accounts for per diem. *Wilcox v. Sibley*, 34 Minn. 215, 25 N. W. Rep. 351. See note to § 115, *supra*.

***§ 209. Compensation of jailers.**

The judge of the district court for each county shall also determine, from time to time, the compensation that shall be allowed for the services of a jailer or turnkey in the county jail; which compensation shall be paid monthly, out of the county treasury, upon the warrant of the county auditor; such jailer or turnkey to be appointed by the sheriff of such county, subject to the approval of the judge. In determining such compensation, the judge shall ratably apportion the amount equitably due therefor from any county other than that in which the jail is situated, which may have committed any prisoners to said jail for safe-keeping; and, on presentation of a certified copy of such order of apportionment to the county auditor of any such county, he shall draw his warrant on the county treasurer, in favor of such jailer, for such compensation. (1873, c. 43, § 2, *as amended* 1887, c. 36.)

This section does not authorize the judge to determine that such jailer shall receive no compensation at all; and an order so determining is void. *State v. McIntyre*, 25 Minn. 383, 386.

TITLE 8.

COUNTY ATTORNEYS.*

§ 210. (Sec. 180.) Qualification, term, oath, and bond.

There shall be elected in each county organized for judicial purposes a county attorney, who shall be a person duly admitted to practice law in all courts of this state, who shall hold his office for the term of two years, and until his successor is elected and qualified. Such county attorney shall, before he enters upon the duties of his office, take and subscribe the oath required by law, and shall file with the clerk of the district court of said county a duly-certified copy of the order admitting him to practice law in this state, and shall also execute a bond in the penal sum of one thousand dollars, to the board of county commissioners, with one or more sufficient sureties, to be approved by said commissioners, conditioned that he will faithfully and impartially discharge the duties of county attorney, and pay over without delay, to the county treasurer, all moneys which come into his hands by virtue of his office, which bond, together with his oath of office, shall be filed and recorded in the office of the register of deeds of the proper county, and, when so recorded, shall be forwarded by such register of deeds to the secretary of state. (*As amended* 1876, c. 71, § 1; 1887, c. 68.)

To be eligible to the office of county attorney a person need not be an attorney and counsellor at law, nor admitted to practice as such in any of the courts of the state. *State v. Clough*, 23 Minn. 17.

*Acts relating to district attorney for the Twelfth district, Gen. Laws 1881, c. 147. (*repealed* 1883, c. 136.) and c. 139.

§ 212. (Sec. 181.) Duties.

It is the duty of the county attorney to appear in all suits in which the county is a party, whether pending within or without the county, without further compensation than his salary. Commissioners Hennepin Co. v. Robinson, 16 Minn. 381, (Gil. 340.) See, also, Day v. Putnam, 16 Minn. 408, 417, (Gil. 365, 374.)

As to the duties of the former "district attorneys" and "prosecuting attorneys," see Nourse v. Supervisors of Hennepin County, 3 Minn. 62, (Gil. 28.) See, also, Territory v. Smith, 3 Minn. 240, (Gil. 164.)

Notice of an appeal to the supreme court, from an order of the district court refusing to set aside a tax judgment, must be served upon the county attorney. Commissioners of Nobles County v. Sutton, 23 Minn. 299.

The approval of a bail-bond, with direction to the sheriff to discharge a prisoner, by a county attorney, if done corruptly, constitutes an indictable misbehavior in office. State v. Wedge, 24 Minn. 150.

***§ 212a. Register of criminal actions.**

It shall be the duty of the county attorney of every county in this state to procure, at the expense of the county, a suitable book, to be known and designated "A register of criminal actions," and which book shall be preserved and kept by him as hereinafter provided, and at the expiration of his term of office be delivered by him to his successor in office. (1885, c. 191, § 1.*)

***§ 212b. Same—Entries.**

Immediately after the conclusion of any preliminary examination or prosecution, conducted by such county attorney, and immediately after the receipt by him of any report of a justice of the peace, as provided in section three of this act, and within ten days after the adjournment of any term of a court of record in his county having criminal jurisdiction, it shall be the duty of such county attorney to enter in such register the title of all criminal causes, conducted, prosecuted, or so reported to him; the date when such examination or prosecution was begun; the date of the finding of an indictment, or the filing of a criminal appeal in such court; the nature of the criminal accusation against the defendant; the result of such examination, prosecution, or trial; if convicted, the nature and extent of the punishment inflicted, and whether the crime charged was committed under the influence of intoxicating liquors. He shall, also, upon the receipt of the report from the justice or clerk hereinafter provided for, enter in such register, under each case, the amount of costs taxed therein, the amount of fines, if any, imposed, and the amount paid thereon. (*Id.* § 2.)

***§ 212c. Report by justices of the peace.**

It shall be the duty of every justice of the peace, within ten days after the conclusion of every criminal prosecution begun and prosecuted before him, to report to the county attorney of his county, or to the county attorney of the county to which his county is attached for judicial purposes, the title of such criminal cause, the nature of the accusation, the result thereof, and, if the defendant is convicted, the nature and extent of the punishment inflicted; whether the crime charged was committed under the influence of intoxicating liquors, the amount of costs paid or incurred by the state in such case, and the amount of fines and costs, or fines or costs, paid by the defendant. (*Id.* § 3.)

***§ 212d. Report by clerks of courts.**

It shall be the duty of the clerk of every court of record having criminal jurisdiction, either before the adjournment or within ten days after the adjournment of any term of such court, to tax the amount of costs paid or incurred by the county or state in the trial of each criminal case tried in said court during said term, including witness fees, and to enter the amount thereof in the

*"An act for the collection, preservation, and report of criminal statistics." Approved February 10, 1885.

record of such case, and immediately thereafter to report to the county attorney of the county the amount of costs so taxed in each of such cases, the amount of fines imposed, and the amount paid thereon. (1881, c. 191, § 4.)

***§ 212e. Sheriff to file process.**

It shall be the duty of every sheriff, or other officer or person who serves any subpoena or other process issued in a criminal action by any court of record having criminal jurisdiction, on or before the last day of every term of such court, to file such subpoena or other process, with his fees for the service thereof indorsed thereon, with the clerk of such court. (*Id.* § 5.)

***§ 212f. County attorney—Report—Receipt—Warrant for December salary.**

It shall be the duty of every county attorney, on or before the tenth day of January of each year, to prepare and transmit to the attorney general, in such form as the attorney general prescribes, a report of the number, character, and result of all criminal cases prosecuted by or reported as aforesaid to him during the preceding year, which report shall also contain such other or further information as the attorney general may require, and said register, if properly kept, may furnish, together with the costs of such prosecution to the county or state. Upon the reception of such report it shall be the duty of the attorney general to send to the county attorney a receipt for the same, which receipt shall be filed with the county auditor of the county; and thereupon, and not otherwise, it shall be the duty of the county auditor to issue to such county attorney a warrant for the salary due him for the preceding month of December, and no warrant shall be issued for said month's salary until such receipt is filed as aforesaid: *provided*, that the report for the year A. D. one thousand eight hundred and eighty-five shall include the period between November fifteenth, one thousand eight hundred and eighty-four, and January first, one thousand eight hundred and eighty-six. (*Id.* § 6.)

***§ 213b. Law partner not to defend prosecutions.**

No law partner of any county attorney, and no attorney having his office with such county attorney, shall be permitted to appear as attorney for the defendant in any criminal action in any court in this state, which action it is the duty of the county attorney to prosecute. (1879, c. 88, § 1.)

§ 216. (Sec. 185.) Report to attorney general.

[Repealed 1885, c. 191, § 7.]

TITLE 9.

JUDGES OF PROBATE.

§ 220. (Sec. 189.) Office—Records.

Prior to March 6, 1852, judges of probate could not take acknowledgments of deeds. The act of that date authorized them to do so. *Baze v. Arper*, 6 Minn. 220, (Gil. 142.)

§ 222. (Sec. 191.) Clerk.*

***§ 223a. Insanity of probate judge.**

Whenever the probate judge of any county becomes or is considered insane, the judge of the district court for such county shall, upon the verified petition of five legal voters thereof, proceed to examine into such alleged insanity, substantially in the manner and for the purpose prescribed in title three, chapter

* Compensation of the clerk of the probate court of Hennepin county, see Sp. Laws 1885, c. 242; Sp. Laws 1887, c. 95.

Employment of clerk by the probate judge of Morrison county, see Sp. Laws 1885, c. 173.

thirty-five, General Statutes one thousand eight hundred and seventy-eight. If, on such examination, such probate judge is found to be insane, or incapacitated to act from mental derangement, the governor shall, on presentation of the certificate of such findings, or authenticated copy thereof, declare the office of such probate judge vacant, and appoint a suitable person to fill such vacancy, as provided by law. (1885, c. 164.)

TITLE 10.

COURT COMMISSIONERS.

§ 224. (Sec. 193.) Court commissioner—Term of office.

There shall be chosen in each organized county one person, who shall be called a court commissioner, and hold his office for the term of four years, and until his successor is elected and qualified.* (*As amended* 1885, c. 26, § 1.)

§ 225. (Sec. 194.) Powers.

The court commissioner has, in addition to those specially enumerated, the powers of a *judge at chambers*, but not those of the *district court in vacation*. *Gere v. Weed*, 3 Minn. 352, (Gil. 249;) followed in *Pulver v. Grooves*, 3 Minn. 350, (Gil. 252.)

A court commissioner may allow a writ of *habeas corpus*, returnable before himself, to issue to his own county, or to an adjoining county, if there be no officer therein authorized to allow such writ. *State v. Hill*, 10 Minn. 63, (Gil. 45.)

What is a sufficient authentication of a bail-bond by a court commissioner, see *State v. Ferry*, 23 Minn. 455, 10 N. W. Rep. 778.

TITLE 11.

COUNTY SURVEYORS.

§ 230. (Sec. 199.) Surveyor in each county—Term, oath, and bond.

There shall be elected in each county a surveyor, who shall hold his office for two years, and until his successor is elected and qualified. He shall reside in the county for which he is elected, and shall, previous to his entering upon the duties of his office, take and subscribe the oath required by law, and give bond to the board of county commissioners in the sum of five hundred dollars, conditioned for the faithful discharge of his duties; said bond and oath of office shall be filed in the office of the county auditor; said bond to be approved by the county commissioners, and recorded with the said oath of office in the office of the register of deeds; and he shall have power to administer oaths to chainmen and other persons under his charge. (*As amended* 1875, c. 30, § 1; 1881, c. 46, § 1; 1887, c. 32.)

§ 232. (Sec. 200.) May appoint deputies.

The said surveyor may appoint such number of deputies as he thinks proper, who shall severally take an oath, for the faithful performance of whose duties he shall be responsible, and, by himself or one of his deputies, execute all surveys which shall be ordered by any court, board of county commissioners, town supervisors, or other public officer, within his county, or upon application of any individual or corporation; and each of said deputies shall have the power to administer oaths to chainmen and other persons under their charge. (*As amended* 1875, c. 30, § 2; 1881, c. 42, § 1.)

* Term of office of commissioners elected at the general election of 1884 extended until first Monday of January, 1889, and until their successors qualify. (1885, c. 26, § 2.)

TITLE 12.

CORONERS.

§ 250. (Sec. 218.) Testimony—Certificate when inquest unnecessary—Entry of proceedings—Fees.

The testimony of all witnesses examined before the coroner's jury must be reduced to writing by the coroner, or under his direction, and be subscribed by the witnesses respectively. And the coroner shall forthwith file such testimony, together with a record of all proceedings had before him, in the office of the clerk of the district court of the county wherein such inquest is held. And in all cases brought to the attention of the coroner wherein he does not deem it necessary to hold an inquest, he shall file with such clerk a certificate, setting forth the facts in relation thereto. For the taking of such testimony the coroner shall be allowed ten cents a folio, and twenty-five cents for such certificate. And the clerk of said court shall forthwith duly file, index, and enter such case or proceeding in a book to be kept for that purpose, in the same manner as proceedings in civil actions are now entered, and shall receive from the treasury of his said county the same fees as are now allowed by law for like services. (*As amended 1887, c. 78.*)

TITLE 13.

CLERK OF DISTRICT COURT.*

§ 257. (Sec. 225.) Bond and oath—Money paid into court.

Every clerk of the district court, before entering on the duties of his office, shall execute a bond to the board of county commissioners, with two or more sureties, approved by said board, in the penal sum of one thousand dollars, conditioned for the faithful discharge of his official duties, and take and subscribe the oath required by law; which oath and bond shall be filed and recorded in the office of the register of deeds: *provided*, that the judge of the district court in any county may order all moneys, paid into court to abide the result of any legal proceedings, to be deposited, until the further order of said court, in some duly-incorporated bank or banks, to be designated by the court as such depository; or said judge, on application of any person or corporation paying such money into court, may require said clerk to give an additional bond, with like effect as the bond provided for in this section, in such amount as said judge shall deem sufficient. That the clerk of said district court shall be entitled to receive a commission of one per cent. on every dollar for receiving and paying over money which may be deposited with him, to-wit: one-half of such commission for receiving, and the other half for paying, the same. Said per cent. to be paid by the party depositing the money. (*As amended 1879, c. 91, § 1; 1887, c. 72.*)

Cited, *State v. Benedict*, 15 Minn. 198, 203, (Gil. 153, 156.)

§ 261. (Sec. 229.) Books to be kept by clerk—Certificates as to judgments.

Every clerk shall procure, at the expense of his county, and keep the following books:

First. A register of actions, in which he shall enter the title of each action, whether originally commenced in his said court or brought there by appeal or transcript of judgment from justice court or from any court of record of the

*See, as to clerk of court of Blue Earth county, Sp. Laws 1881, Ex. Sess. a. 202.

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state or the United States, a minute of each paper filed in the court [cause] and all proceedings therein.

Second. A judgment book, in which shall be entered the judgments in each action.

Third. A docket, in which he shall enter alphabetically the name of each judgment debtor, the amount of the judgment, and the precise time of his entry.

Fourth. Such other books as the court in its discretion may direct. Whenever information as to the contents of any of said books respecting the existence or docketing or satisfaction of judgment is required for the purpose of making or certifying abstracts of title, any person requiring such information shall apply to the clerk therefor. And said clerk shall at once make search, and certify the result of such search, under his hand and the seal of said court, giving the name of the party against whom any judgment appears of record, the amount of such judgment, and the time of its entry, and of its satisfaction, [if satisfied,] and, if requested, any other entries relative to such judgments as they appear of record: *provided*, that this act shall not prevent attorneys or other persons from having reasonable access to and from examining such records when no such certificate is necessary or required. (*As amended* 1883, c. 28, § 1; 1887, c. 48, § 1.)

Where a decree has been lost, the making and signing it by the judge may be proved by the clerk, although the testimony of the judge is attainable. *Smith v. Valentine*, 19 Minn. 452, (Gil. 393.)

***§ 261a. Fees.**

For such services the clerk shall receive the same fees as are now allowed by law for certificates and examination of records. (1887, c. 48, § 2.)

***§ 261b. Index to court records.**

It shall be the duty of the clerk of the district court of every county in this state to procure at the expense of the county two well-bound books, to be denominated "Plaintiff's Index to Court Records," and "Defendant's Index to Court Records," to be ruled and printed substantially in the following manner:

Plaintiffs.	Defendants.	Kind of action.	Term Commenced.	Record-Book.	Pages.

Term Disposed of.	Date of Judgment.		Judgment Docket.		Execution Docket.		Fee-Book.		Satisfied or Not Satisfied.	Number of Case.
	Month.	Day.	Book.	Page.	Book.	Page.	Book.	Page.		

—In which all the cases shall be entered in alphabetical order by the name of each plaintiff and defendant. Said book shall set forth the names of the parties, kind of action, term commenced, the record-books and pages on which

cases are recorded, the term disposed of, date of judgment, books and pages of the judgment dockets, execution dockets, fee-books, satisfied or not satisfied, and number of case. The defendants' index shall be ruled and printed in the same manner as the plaintiffs', except the parties shall be reversed. (1885, c. 181.)

***§ 261c. Omitted entries—Fees.**

That the clerks of the several district courts of this state shall enter upon the registers provided for that purpose all cases, civil and criminal, which, through the mistake, inadvertence, or neglect of their predecessors in office, shall not have been registered. The true date of the filings in such cases shall be entered on said registers, and said entries, when so made, shall have the same force and effect as if made by the clerk of the district court at the proper time: *provided*, that the fees for such services shall be paid by the county only upon the order of the court: *and provided, further*, that in docketing any such judgment the date thereof shall be the time when the same is actually docketed, and the lien thereof shall attach only from such date. (1885, c. 262.)

§ 263. Compensation.

OFFICIAL BONDS.

***§ 268a. Blanks for official bonds to be prepared.**

It is hereby made the duty of the secretary of state, the attorney general, and the public examiner to prepare and cause to be printed blank forms of official bonds for the use of the following officers, viz.: County auditor, county treasurer, register of deeds, sheriff, clerk of the district court, court commissioner, coroner, and judge of probate, county attorneys, and county surveyors. (1881, c. 110, § 1.† *as amended* 1883, c. 9, § 1.)

***§ 268b. To be furnished to county auditor.**

The secretary of state shall each year, or as often as may be necessary, forward to the county auditor in each county in this state a sufficient number of such printed forms for the use of such county officers. (*Id.* § 2.)

***§ 268c. Using blanks.**

It shall be the duty of each person elected to any office named herein to use the blanks so prepared before entering upon the discharge of his duties: *provided*, that bonds shall not be deemed invalid because executed otherwise than upon such blanks. (*Id.* § 3.)

***§ 268d. Disposition of bonds.**

All official bonds of county officers which are now or which may hereafter be required to be filed and recorded in the office of the register of deeds of the county where such officers, respectively, reside, shall be forwarded by such register of deeds as soon as recorded to the secretary of state. (*Id.* § 5.)

***§ 268e. Approval and filing.**

The secretary of state shall obtain, in writing, upon all bonds forwarded to him, the approval of the same as to statutory form and execution, by the at-

*Fees of the clerk of court of Goodhue county, Sp. Laws 1879, c. 307; same, Hennepin county, Sp. Laws 1879, c. 324; same, Kandiyohi county, Sp. Laws 1887, c. 365; same, Mower county, Sp. Laws 1879, c. 398, Sp. Laws 1881, c. 108; same, Otter Tail county, Sp. Laws 1887, c. 358; same, Rice county, Sp. Laws 1879, c. 306.

†An act to provide for the preparation and printing of blanks for official bonds of county officers, and for recording such bonds and filing the same in the office of the secretary of state. Approved March 4, 1881. Section 4 repealed 1883, c. 47, § 2.

torney general; and when so approved he shall file the same in his office and retain the same for the use of all parties interested therein. (*Id.* § 6.)

***§ 268f. Non-approval.**

In case of non-approval of any bond on account of defect in form or execution of the same, the attorney general shall indorse thereon the reasons for such non-approval, and the secretary of state shall advise the county commissioners of the proper county of such non-approval, with the reason therefor, and the county commissioners shall at once require the officer executing the same to execute, without delay, a bond perfected according to the statutes, which shall be approved, recorded, and filed as provided by law; but nothing in this act shall be construed as invalidating the original bond for any portion of such officer's term in office previous to the filing of the perfected bond with the secretary of state, or as interfering with the duties of the county commissioners in regard to the approval of bonds, or in regard to the calling for new and additional bonds. (*Id.* § 7.)

***§ 268g. Removal of bond.**

No bond so filed in the office of the secretary of state shall be removed therefrom, except upon the written order of the judge of some court of record of the state before whom an action is pending to enforce the conditions of such bonds. (*Id.* § 8.)

***§ 268h. Certified copy of bond.**

A copy of any such official bond, so filed in the office of the secretary of state, and duly certified by him, under his hand and seal of office, to be a true copy of the original bond on file in his office, may be used as evidence in all the courts of this state, and shall have the same force and effect as if the original bond were produced in court. (*Id.* § 9.)

***§ 268i. Repeal.**

All acts and parts of acts inconsistent with the provisions of this act are hereby repealed. (*Id.* § 10.)

***§ 270a. New bond—When required.**

The county commissioners of any county in the state of Minnesota may require any county officer to give a new official bond whenever in the opinion of a majority of said commissioners the original bond of any county officer has become insufficient. (1885, c. 198, § 1.)

***§ 270b. Same—Demand by surety.**

Any person who is a surety upon the official bond of any county officer may file with the board of county commissioners of the proper county, at any regular or special meeting of said board, or with the county auditor of such county, a request in writing that the officer for whom he is surety, naming him, be required to furnish a new official bond, and giving the reasons for such request. Such request shall be laid before the board of commissioners on the first day of their next meeting following the date of filing said request, and shall take precedence of all other business before said commissioners. (*Id.* § 2.)

***§ 270c. Same—Notice to officer.**

When any board of county commissioners shall deem the bond of any county officer insufficient, or when the request of any surety on the official bond of any county officer, as provided in the preceding section, is laid before them, they shall cause a notice to be issued by them, signed by the chairman of said board, and countersigned by the auditor of said county, and directed to the county officer named in such request, or whose bond is deemed insuffi-

cient, requiring him to furnish a new official bond, to be approved by them, before the first day of the next regular, special, or adjourned meeting of said board, but not earlier than twenty days from date of said notice, under the penalty of forfeiture of his office, which notice shall be served personally upon such officer at least twenty days before such general, special, or adjourned meeting of such board, and the same shall be served and returned in the same manner as summons in district courts. (1885, c. 198, § 3.)

***§ 270d. Same—Failure to furnish.**

Whenever any county officer has been served with the notice as provided in the preceding section and fails or neglects to furnish such new bond, as so required, the office held by such officer shall be deemed vacant, and the vacancy thus created shall be filled as provided by law: *provided*, that if it shall be made to appear to said board of county commissioners that such officer has been prevented by sickness, or other physical disability, from furnishing such new bond, as so required, said commissioners may grant such officer further time, but not later than the next meeting of said board of commissioners, to furnish the same. And if said new bond is not furnished as required, the office of such officer shall be deemed vacant, as before provided. (*Id.* § 4.)

***§ 270e. Original bond and sureties.**

That when a new bond is taken and approved as provided, the original bond, and the rights and liabilities of the parties thereto incurred or existing at or prior to the time of the approval of the new bond, shall not be anywise affected or impaired; but such original bond and the sureties thereon shall not be liable for the acts of such officer after said new bond is approved and accepted. (*Id.* § 5.)

ADDITIONAL PROVISIONS AS TO COUNTY OFFICERS.

***§ 271. Records subject to public inspection.**

The several judges of probate, county auditors, and clerks of the district courts of this state shall during the hours when their respective offices are, or may be required by law to be, open, exhibit any papers, files, or records of their offices, or in their official custody, to the inspection of any person demanding the same, free of charge, except in those cases where fees are provided by law; and in the latter case, upon tender of such fees. (1887, c. 83, § 1.)

***§ 272. Certified copies of records.**

The several county auditors, judges of probate, and clerks of district court shall, during the hours when by law their respective offices are required to be open, furnish, to any person demanding the same, a certified copy of any record, file, or papers on file or deposited in their offices, or in their official custody, upon tender of such proportionate fees as are now allowed by law to registers of deeds for like services. (*Id.*)

***§ 273. Books where other counties are attached.**

It is hereby made the duty of the officers of each county in this state, to which any unorganized, or partially unorganized, county may be attached for judicial, record, taxation, or other purposes, to keep separate and distinct books of accounts and records for each county so attached, which books of accounts and records shall be chargeable to, and paid for by, such attached county; and whenever such attached county shall become detached, said books of accounts and records shall be turned over to the proper officers of said county, so detached, as the property of such county, or to the officers of the county to which said detached county may thereafter become attached. (1883, c. 123, § 1.)